

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

JOHN DUNMIRE

NO.05-64 ERIE

V.
CAPT.DESPAQUAL,ET AL

ADDENDUM TO PLAINTIFF'S OBJECTION TO MAGISTRATES REPORT

AND NOW, Comes the Plaintiff, John Dunmire, pro se, who submits this addendum to the objections previously filed;

1.Plaintiff avers that the magistrate Judge's report and recommendation to dismiss the complaint for failure to exhaust the grievance process should be denied for the following reasons,Plaintiff avers that although he was not given an individual interview or the opportunity to sign the grievance as resolved or unresolved,Plaintiff considered the grievance to be resolved due to the fact that the grievance response stated that a fact finding would be conducted to determine why the strip searches occurred.Plaintiff avers that if the grievance was resolved as plaintiff contends it was,then he has completed the grievance process because a resolved grievance does not need to be appealed and since plaintiff believed that it was at the time resolved he would not have filed a further appeal even if the defendants had properly responded to the grievance,interviewed plaintiff and given him the opportunity to sign the grievance as resolved but defendants did not give plaintiff that opportunity and as such plaintiff avers that he considered the grievance resolved.

2.Plaintiff avers that since he considered the grievance resolved there was no need to further appeal and as such the defendant's motion to dismiss for failure to exhaust the grievance process is moot and should be denied.

3.Plaintiff avers that if this Court finds that despite plaintiff's contention that he believed the grievance to be resolved and therefore the grievance process complete,that plaintiff did not exhaust the grievance process,plaintiff avers that the third circuit held in DEFOY V.McCULLOUGH,PICS CASE NO.05-0007(3rd Circuit Jan.4,2004)that futility is an exception to the exhaustion rule and as it relates to the case at bar,had plaintiff appealed the grievance it would have proved futile because no further relief could have been given to plaintiff on appeal.

WHEREFORE,Plaintiff prays this Court to deny defendant's motion to dismiss.

Respectfully Submitted,

S/John Dunmire 10-3-05

Certificate of Service

I, John Dunmire do hereby Certify
that I have Served a true and correct
copy of the Foregoing by Placing same
in the US mail, 1st class Postage Paid
Addressed As Follows:

Rodney Torbic, Esq.
office of the Attorney General
564 Forbes Ave.
Pittsburgh, PA 15219

Respectfully Submitted,
S/ John Dunmire, Plaintiff

10-3-05

John Dunmire, CL-4931
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Albion, PA 16475-0002